

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

PRO-FOOTBALL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:14-cv-1043 (GBL/IDD)
	)	
AMANDA BLACKHORSE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**NOTICE OF INTERVENTION BY THE UNITED STATES OF AMERICA  
TO DEFEND THE CONSTITUTIONALITY OF A FEDERAL STATUTE**

Pursuant to Federal Rules of Civil Procedure 5.1(c) and 24(a)(1), and in accordance with the authorization of the Solicitor General of the United States, the United States hereby intervenes in this case for the limited purpose of defending the constitutionality of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a). Plaintiff, Pro-Football, Inc., asserted in its Complaint, ECF No. 1, and in its Notice of Constitutional Question, ECF No. 17, that it is asserting a facial and as-applied challenge to the constitutionality of Section 2(a). Specifically, Plaintiff claims that Section 2(a) violates the First Amendment to the U.S. Constitution. The United States will engage the current parties with the aim of developing a schedule for the briefing of dispositive motions on the constitutional question, which will include the United States’s memorandum in response to the constitutional challenge.

The United States is entitled to intervene in this case as of right pursuant to the Federal Rules of Civil Procedure and statute. Federal Rule of Civil Procedure 5.1(c) permits the Attorney General to intervene in an action as of right when, as here, the constitutionality of a

federal statute has been challenged. Federal Rule of Civil Procedure 24(a)(1) further permits a non-party to intervene when the non-party “is given an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a)(1). The United States is specifically authorized by federal statute to intervene in any federal action in which the constitutionality of an Act of Congress is drawn into question. 28 U.S.C. § 2403(a) (“In any action . . . wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court . . . shall permit the United States to intervene . . . for argument on the question of constitutionality.”). Here, where Plaintiff has provided notice of its challenge to the constitutionality of the Lanham Act, 28 U.S.C. § 2403(a) unconditionally allows the United States to intervene to defend the constitutionality of the Act. *See Oklahoma ex rel. Edmondson v. Pope*, 516 F.3d 1214, 1216 (10th Cir. 2008) (citing 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1915 (2d ed.1986)).

Intervention by the United States will not interfere with the timely adjudication of this action. As the United States explained in its Acknowledgment of Constitutional Challenge, ECF No. 33, the United States intends to coordinate its briefing with any schedule established for the parties’ briefing of motions related to the constitutional challenge. This notification is also timely. The Court authorized the United States to file this notice on or before January 9, 2015. *See Order*, ECF No. 38 (Nov. 12, 2014).

For these reasons, the United States hereby provides notice of intervention in this matter for the purpose of defending the constitutionality of Section 2(a) of the Lanham Act.

///

///

Dated: January 9, 2015

Respectfully submitted,

JOYCE R. BRANDA  
Acting Assistant Attorney General

DANA J. BOENTE  
United States Attorney

/s/  
DENNIS C. BARGHAAN, JR.  
Assistant U.S. Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
Tel: (703) 299-3891  
Fax: (703) 299-3983  
Email: [Dennis.Barghaan@usdoj.gov](mailto:Dennis.Barghaan@usdoj.gov)

JOHN R. GRIFFITHS  
Branch Director  
ARTHUR R. GOLDBERG  
Assistant Branch Director  
ERIC J. SOSKIN (PA Bar 200663)  
Senior Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, N.W.  
Washington, D.C. 20530  
Tel: (202) 353-0533  
Fax: (202) 305-2685  
Email: [Eric.Soskin@usdoj.gov](mailto:Eric.Soskin@usdoj.gov)

Attorneys for the United States

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of January, 2015 I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Craig C. Reilly, Esq.  
THE LAW OFFICE OF CRAIG C. REILLY  
111 Oronoco Street  
Alexandria, Virginia 22314  
[craig.reilly@ccreillylaw.com](mailto:craig.reilly@ccreillylaw.com)

Jesse A. Witten  
Jeffrey J. Lopez  
Adam Scott Kunz  
Tore T. DeBella  
Jennifer Criss  
DRINKER BIDDLE & REATH LLP  
1500 K Street, N.W., Suite 1100  
Washington, D.C. 20005-1209

email: [Jesse.Witten@dbf.com](mailto:Jesse.Witten@dbf.com); [Jeffrey.Lopez@dbf.com](mailto:Jeffrey.Lopez@dbf.com); [Adam.Kunz@dbf.com](mailto:Adam.Kunz@dbf.com);  
[Tore.DeBella@dbf.com](mailto:Tore.DeBella@dbf.com); [Jennifer.Criss@dbf.com](mailto:Jennifer.Criss@dbf.com)

Date: January 9, 2015

\_\_\_\_\_/s/\_\_\_\_\_  
DENNIS C. BARGHAAN, JR.  
Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, VA 22314  
Tel.: (703) 299-3891  
Fax: (703) 299-3983  
Email: [Dennis.Barghaan@usdoj.gov](mailto:Dennis.Barghaan@usdoj.gov)  
Attorneys for the United States